

1983

The Minnesota Fiscal Disparities Act: A Model for Growth-sharing in the 1980s

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Recommended Citation

(1983) "The Minnesota Fiscal Disparities Act: A Model for Growth-sharing in the 1980s," *William Mitchell Law Review*: Vol. 9: Iss. 2, Article 8.

Available at: <http://open.mitchellhamline.edu/wmlr/vol9/iss2/8>

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THE MINNESOTA FISCAL DISPARITIES ACT: A MODEL FOR GROWTH-SHARING IN THE 1980s

The Minnesota Fiscal Disparities Act, adopted in 1971, has undergone substantial judicial and legislative scrutiny during the past ten years. This Note reviews the Minnesota judicial challenges and tests the validity of the Act against a similar yet distinguishable statutory growth-sharing plan presently in effect in New Jersey. This Note demonstrates that Minnesota, like New Jersey, treats metropolitan tax base growth-sharing plans as land use planning tools rather than true tax acts, to more effectively implement the reduction of land use problems created by fiscal disparities.

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I. INTRODUCTION

Over the past several years, affluent middle class homeowners and businesses have abandoned the inner city and moved to the suburbs where land is cheaper and new construction is less restricted. The poor and elderly, who are highly dependent upon public services offered by local government, have moved into the abandoned inner city. Although aggregate property values in the inner city have slowed, property tax rates rose to finance the increased public services burden. The result has been a higher per capita tax burden in the inner city than there previously had been.¹ Commercial-industrial businesses have responded to the higher per capita tax burden by locating in the suburbs, which further exacerbates the ever-widening disparity between suburb and inner city tax bases. Urban economists call the disparity in tax bases "fiscal disparity"² and view it as a major obstacle to revitalization of the inner

1. In the 37 largest Standard Metropolitan Statistical Areas, the difference in per capita local government expenditures between center city areas and suburban areas rose steadily from a 32% difference in 1957 to 37% in 1970 and 41% in 1977. "The Central City/Outside Central City differences widened by more than 25 percentage points between 1957 and 1977 in Washington (D.C.), Baltimore, Newark, Pittsburgh, Providence, Minneapolis, St. Louis, Cleveland, Dayton, San Antonio, San Francisco, and Seattle." UNITED STATES ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, CENTRAL CITY-SUBURBAN FISCAL DISPARITY & CITY DISTRESS 1977 9 (1980).

2. An excellent discussion of the fiscal disparities problem is found in Note, *Minnesota's Metropolitan Fiscal Disparities Act—An Experiment in Tax Base Sharing*, 59 MINN. L. REV. 927 (1975). The Note states:

city.

The effects of fiscal disparity have been far-reaching and not necessarily self-contained in the heavily burdened inner city. Undoubtedly, the inner city educational system has suffered more from the effects of fiscal disparity than the suburbs. School systems, as well as other public services, traditionally have been funded through local property taxes. To raise revenues that equal the per pupil expenditures of school districts with higher tax bases, a "tax-base poor" school district must assess a greater tax per dollar of property value. Equal expenditures are assumed to result in equal educational opportunity.³ If providing equal educational expenditures is obtained through a per capita tax burden that is too onerous, differences in educational opportunity will occur. In Minnesota, a school aid program assists poorer districts with direct grants from the state's general fund,⁴ once the district levies a minimum tax.

In 1971, the Minnesota Legislature recognized that fiscal disparities created regional land-use problems as well as local inner city educational inequalities, particularly in the Minneapolis-St. Paul metropolitan area.⁵ Competition for highly valued commercial-industrial property within the metropolitan area had begun to thwart the policy of channeled, environmentally sound growth adopted by the Metropolitan Council.⁶ To

Fiscal disparities may thus arise when the per capita assessed valuation of real property differs between two . . . governmental units; a unit with a high fiscal capacity can tax itself at a low rate and still generate the same revenue per capita that a poorer municipality will generate with a high tax rate. This situation has had two major effects: inequities in the provision of public services, and imbalance in the development of the seven-county metropolitan area.

Id. at 929-30 (footnotes omitted).

3. This was the assumption in *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971), where pupils challenged the Minnesota system of financing public elementary and secondary education. The court noted:

"The districts having the lowest per pupil expenditure, which are generally the poorest districts in terms of assessed valuation per-pupil unit, offer an education that is inferior to the districts having the highest per-pupil expenditures."

. . . [T]he Court must assume [that the correlation between expenditure per pupil and the quality of education] is high. To do otherwise would be to hold that in those wealthy districts where the per pupil expenditure is higher than some real or imaginary norm, the school boards are merely wasting the taxpayers' money.

Id. at 874 (quoting Affidavit of Van A. Mueller); *see also* *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

4. During the 1979-80 school year in Minnesota, approximately 39.5% of all school districts' expenditures were financed through local sources, 54.1% from state sources, and 6.4% federal. B. DIAMOND, A. HOPEMAN & M. GRONSET, *MINNESOTA SCHOOL FINANCE, A GUIDE FOR LEGISLATORS* 6 (1981).

5. The metropolitan area affected by the Fiscal Disparities Act, MINN. STAT. §§ 473F.01-13 (1982 & Supp. 1983), is "the territory included within the boundaries of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin, Ramsey, Scott excluding the city of New Prague, and Washington counties." MINN. STAT. § 473F.02, subd. 2 (1982).

6. The Metropolitan Council was created in 1967. *See* Act of May 25, 1967, ch. 896,

reduce competitive incentives for new growth while retaining maximum local control over tax levies,⁷ the Minnesota Legislature adopted the Metropolitan Fiscal Disparities Act.⁸ The foregoing goal of the Act is attained by stipulating that the tax base does not belong, as a matter of right, to any particular taxing jurisdiction. Instead, the tax base is shared among the communities in the seven-county region.

Specifically, forty percent of the growth in the commercial-industrial⁹ tax base¹⁰ of all communities is shared within the region.¹¹ As a result,

1967 Minn. Laws 1923 (codified at MINN. STAT. §§ 473.122-.249 (1982)). The council is responsible for recommending the creation of and coordinating the functions of commissions that provide certain services to the seven-county area such as transit, sewage, solid waste disposal, metropolitan parks, and open space. *See* MINN. STAT. § 473.145 (1982). The Council was also instrumental in the passage of MINN. STAT. §§ 473.851-.872 (1982), the Metropolitan Land Use Planning Act. *See infra* note 77 and accompanying text.

7. *See* MINN. STAT. § 473F.01 (1982).

8. Act of July 23, 1971, ch. 24, 1971 Minn. Ex. Sess. Laws 2286 (current version at MINN. STAT. ch. 473F (1982 & Supp. 1983)); *see* Village of Burnsville v. Onischuk, 301 Minn. 137, 138, 222 N.W.2d 523, 524 (1974). The statutory title is "Metropolitan Revenue Distribution."

9. MINN. STAT. § 473F.02, subd. 3 (1982) defines commercial-industrial property as agricultural land, private structures on publicly owned rural land, temporary and seasonal residential recreational property, property used or zoned for commercial or industrial purposes, and public parking ramps in certain first class cities. *Id.*

10. The Act uses the term "assessed valuation" rather than "tax base." "Valuation" is defined as the market value of real property within a municipality. MINN. STAT. § 473F.02, subd. 13 (1982).

11. The Act operates as follows:

- a. A city computes its net growth in commercial-industrial assessed value by subtracting the total commercial-industrial value from the previous year from the total commercial-industrial value of the current year. MINN. STAT. § 473F.06 (1982).
- b. Forty percent of the net growth is the contribution to the "area-wide tax base." MINN. STAT. §§ 473F.05-.07 (1982 & Supp. 1983). The ratio of the contribution amount to the city's total commercial-industrial value of the current year is the percent of the assessed value of each parcel of commercial-industrial property in the assessment district that will later be subject to the area-wide tax rate. MINN. STAT. § 473F.08, subd. 6 (1982).
- c. The amount of tax base that a city receives back from the area-wide tax base is computed by adding contributions from all cities to the area-wide tax base, then multiplying this total by the "distribution index." The distribution index is computed on the basis of a formula whose factors are the city's population and the ratio of the average per capita market value of real property in the metropolitan area to the city's per capita market value of real property. The formula favors communities whose per capita value is less than the metropolitan average. MINN. STAT. § 473F.07, subds. 3-5 (1982 & Supp. 1983).
- d. The city's total taxable value is computed by aggregating the current assessed value of all properties, subtracting the contribution to the area-wide base (see step b) then adding the distribution from the area-wide base (see step c). MINN. STAT. § 473F.08, subd. 2 (1982).
- e. The local mill rate is then applied to all properties in the city, except that it is not applied to the growth portion of commercial-industrial properties (the percentage calculated in step b). MINN. STAT. § 473F.08, subds. 3 & 4 (1982).

the Act redistributes increases in commercial-industrial tax bases that may accrue to a particular locality. Some reasons for these increases include locational advantages such as close proximity to a federal interstate highway, or the increased availability of undeveloped land normally found in the outer fringes of the region. Under the plan of redistribution, all communities reap benefits from commercial-industrial growth in the region, while the individual communities maintain control over property tax levels¹² and the quality of public services.

Despite the obvious benefits of the Act, it is not without its problems. Subsequent to its enactment and implementation, several constitutional challenges have been made to upset its redistribution plan. This Note will review the constitutional challenges that have been made to the Act,¹³ summarize arguments raised against the Act and the concept of base-sharing,¹⁴ and discuss a similar growth-sharing plan implemented in New Jersey¹⁵ in order to identify those elements that present and future policymakers will want to modify, or at a minimum address, when confronted by other base-sharing plans.

II. UNIFORMITY OF TAXATION

The Minnesota Constitution provides that "[t]axes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes."¹⁶ Early Minnesota cases had interpreted this constitutional provision, known as the uniformity clause, to require that special

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- f. The area-wide mill rate is applied to the growth portion of commercial-industrial properties (see step b). The area-wide mill rate is computed by aggregating all products of a city's distributed base (see step c) times that city's local mill rate, and dividing this sum by the total area-wide base. MINN. STAT. § 473F.08, subd. 5 (1982).
 - g. The total tax on a commercial-industrial parcel (both the amount attributable to all local rates, and the amount attributable to the area-wide rate) is then collected by the county treasurer, and is distributed back to the city.

The above outline does not take into account any complicating factors, such as the effect of tax increment financing or the situation where a taxing jurisdiction consists of parts of one or more municipalities. The above sequence is a summary of a more detailed description found at NATIONAL COUNCIL FOR URBAN ECONOMIC DEVELOPMENT INFORMATION SERVICE: TAX BASE SHARING 8-10 (1976).

The operation of the Act is unlike the statewide school financing system in which tax revenues are shared. State aids to school districts come primarily from the foundation aid program. MINN. STAT. § 124.212 (1982). The school financing program is funded by the state's general fund, comprised of state income and sales tax collections.

12. There are, however, legal restraints on the tax levy that can be set. State law limits the amount by which cities, counties, and other political subdivisions can increase their tax levies from one year to the next. For taxes payable in 1982 and subsequent years, the levy limit may be increased each year by eight percent plus any adjustments for an increase in the number of homesteads. MINN. STAT. §§ 275.50-.56 (1982).

13. See *infra* notes 16-65 and accompanying text.

14. See *infra* notes 66-93 and accompanying text.

15. See *infra* notes 94-121 and accompanying text.

16. MINN. CONST. art. X, § 1.

benefits must accrue to the district that is required to pay the tax.¹⁷ In light of early court precedent, the Metropolitan Fiscal Disparities Act would seem constitutionally invalid because benefits are being redistributed from benefit-rich communities to benefit-poor communities. In 1974, however, the Minnesota Supreme Court refused a constitutional challenge to the Act, in *Village of Burnsville v. Onischuk*,¹⁸ and upheld its validity by finding that the "special benefit" element of the uniformity requirement was absent.¹⁹

In *Onischuk*, plaintiffs, the Village of Burnsville and one of its planning commissioners, argued that taxes can be levied only to pay for debts incurred by the taxing district having the responsibility for providing the goods and services to those who bear the tax.²⁰ The plaintiffs maintained that "the district simply acts as a conduit for its constituent systems of government to redistribute revenues among those units which have the burden of providing services."²¹ The trial court found that the metropolitan area had not been expressly established by the legislature as a new taxing district, and that the Act required each existing taxing district to contribute to a fund which is distributed according to "a formula having no reasonable relationship between that contribution made and the benefit derived by the segment of the population required to bear the financial burden."²² The trial court held that the lack of a reasonable relationship violated the constitutional uniformity requirement because it was not "uniform upon the same class of subjects."²³

On appeal, the Minnesota Supreme Court reversed the trial court on the uniformity issue but did not directly address the question of whether a new taxing district had been established.²⁴ Instead, the *Onischuk* court implied that a new taxing district had been established by equating the

17. See, e.g., *City of Jackson v. County of Jackson*, 214 Minn. 244, 247-48, 7 N.W.2d 753, 755 (1943); *Village of Robbinsdale v. County of Hennepin*, 199 Minn. 203, 207, 271 N.W. 491, 493 (1937); *Sanborn v. Commissioners of Rice County*, 9 Minn. 273, 277, 9 Gil. 258, 262 (1864).

18. 301 Minn. 137, 153-54, 222 N.W.2d 523, 532-33 (1974), *appeal dismissed*, 420 U.S. 916 (1975).

19. *Id.*

20. *Id.* at 147, 222 N.W.2d at 529.

21. *Id.*

22. *Id.* at 144, 222 N.W.2d at 528.

23. *Id.* at 145, 222 N.W.2d at 528.

24. The plaintiffs had argued that because the Metropolitan Fiscal Disparities Act had not expressly created a new taxing district, some of the existing taxing districts (cities, villages, towns, and school districts) which are required to contribute to the metropolitan pool are shouldering taxes which benefit other districts. See *id.* at 147, 222 N.W.2d at 529. The plaintiffs' attack was based on the premise that taxes can only be levied to pay for debts incurred by the taxing district which provided services to those who paid the tax. Because there are no new services to be provided by the metropolitan area, the district is merely a conduit for existing districts to redistribute revenues. Defendants contended that an area could be found to be a taxing district without the legislature expressly designating it as such. *Id.* at 146, 222 N.W.2d at 529.

"benefits" received with both the intangible spillover benefits flowing to some communities, and the tangible measurable benefits distributed in the form of tax base to others.²⁵ The *Onischuk* decision confirmed that the uniformity clause applies to the distribution of revenue as well as to the levy of taxes,²⁶ but the rule is not strictly applied to require that jurisdictions must receive direct benefits from taxes paid.²⁷

The Minnesota Supreme Court, however, modified in part its prior holdings. In doing so, the court stated:

Our decision to reverse [the trial court] therefore hinges on what we deem to be a developing concept of the meaning of the word "benefit." It seems to us that the phrase "special benefit" no longer adequately serves the constitutional requirement of uniformity. In a seven-county area which is heavily populated, we are of the opinion that it is no longer necessary for units of government providing tax revenue to receive the kind of tangible and specific benefits to which our court has

25. The court reasoned:

[W]e are today dealing with a viable, fluid, transient society where traditional concepts of what confers a tax benefit may be too parochial.

In other words, in terms of traditional balancing of benefits and burdens, the benefits conferred on residents of a particular municipality because of the location of commercial-industrial development within its boundaries may far exceed the burdens imposed on that municipality by virtue of the additional cost of servicing and policing the particular development which has located there. It is the theory of the Fiscal Disparities Act that the residents of highly developed commercial-industrial areas *do* enjoy direct benefits from the existence of adjacent municipalities which provide open spaces, lakes, parks, golf courses, zoos, fairgrounds, low-density housing areas, churches, schools, and hospitals.

Id. at 152-53, 222 N.W.2d at 532.

26. See *Village of Robbinsdale v. County of Hennepin*, 199 Minn. 203, 207, 271 N.W. 491, 493 (1937) (holding unconstitutional a statute that required counties to reimburse towns which had expended for poor relief amounts in excess of one mill of taxable value of real property in the town); *State ex rel. City of New Prague v. County of Scott*, 195 Minn. 111, 115, 261 N.W. 863, 865 (1935) (upholding a county tax for bridge and road construction where the amount contributed by the city of New Prague benefitted that city fully and to reimburse the city would result in a double benefit).

27. See *Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958). In *Visina*, the Seaway Port Authority of Duluth, Minnesota, required funds to construct terminal port facilities in anticipation of opening of the Great Lakes-St. Lawrence Waterway. Funds were to be raised through the issuance of certificates of indebtedness by the state, and the issuance of bonds by the county of St. Louis and the City of Duluth. The certificates of indebtedness were issued in anticipation of the revenue to be derived from a special statewide tax. The argument was that this tax was imposed on some people who derived no benefit from the facilities. The court stated:

Absolute equality of taxation is never attained. . . . If there is a reasonable relationship to the apportionment of the taxes and the benefit to be derived by that segment of our population required to bear the financial burden, it lies within the province of the legislature to make such apportionment. . . . [I]t is reasonable to believe that the state as a whole will benefit to some extent from the increased traffic and availability of cheaper transportation for the products which it exports and imports.

Id. at 195, 89 N.W.2d at 650.

previously referred in order to satisfy the uniformity clause.²⁸

The *Onischuk* court clarified its modification by stating that the kind of intangible spillover benefits that some "net contributors" of tax base receive (e.g., use of parks, fairgrounds, low-density housing areas, or other amenities located in different municipalities) are benefits that are sufficiently direct to satisfy the requirements of the uniformity clause.²⁹

In comparing tax base distributions and spillover benefits, the *Onischuk* court failed to recognize that the Fiscal Disparities Act does not create the power to raise revenue through taxation. Rather, the Act delineates the capacity to raise revenue and encourages more rational land use planning and development. The Citizens League submitted an amicus curiae brief which noted, "[S]ignificantly, [the Act] affects the local government's *capacity* to raise revenue, but it does not *raise revenue* per se. That responsibility falls on the local government."³⁰ Taxes levied by individual municipalities through operation of the Act benefit those individuals and businesses which have paid the tax because no municipality is required to pay to another unit of government any part of the taxes collected. "Since [t]axes are defined to be burdens or charges imposed by the legislative power upon persons or property, to raise money for public purposes,"³¹ the Act does not create the power to raise revenue.

Base sharing properly focuses attention on the overriding planning goals of the Act when it is interpreted as a regulation to control land development rather than a tax.³² Interpreting base sharing as a land use regulation also makes it easier for proponents of the Act to establish its constitutionality. Review of land use regulation demands only that the regulation be rationally related to a legitimate government objective.³³

28. 301 Minn. at 149, 222 N.W.2d at 530.

29. *Id.* at 153, 222 N.W.2d at 532.

30. Amicus Curiae Brief of the Citizens League at 13, *McCutcheon v. State*, No. 81-368 (Minn. Feb. 19, 1982).

31. T. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 986 (8th ed. 1927).

32. The purposes of the Act are stated at MINN. STAT. § 473F.01 (1982).

33. *See Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The Supreme Court held in this landmark case that the due process clause required that the zoning regulation at issue be rationally related to one of the governmental goals of promoting health, safety, morals, or the general welfare of the community. Although for several decades after *Euclid*, courts tried to limit regulations only to those promoting these four objectives, they have more recently recognized the validity of laws furthering other goals. *See, e.g.*, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (restrictions on residency were designed to promote "family values, youth values, and the blessings of quiet seclusion"); *Berman v. Parker*, 348 U.S. 26, 33 (1954) (it is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled); *Golden v. Planning Bd. of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138, *appeal dismissed*, 409 U.S. 1003 (1972) (subdivision controls in residential districts sought, by the implementation of sequential development and timed growth, to encourage efficient utilization of land). The *Golden* court held that

Also, state courts are exceedingly deferential to legislative judgment in adopting land use controls.

In *Meadowlands Regional Redevelopment Agency v. State*,³⁴ the New Jersey Superior Court applied a land use regulation analysis and standard of review to a base-sharing plan similar to the Minnesota Act. The standard used was discussed in the context of a challenge to the establishment of the Meadowlands district. Plaintiffs argued that the law had arbitrarily designated the area's boundaries rather than reasonably classifying it for regulation, thus rendering the law invalid as a special law. After concluding that the law was not arbitrary because the exclusion of certain areas was based on recognized planning principles, the New Jersey Superior Court stated:

"[A] classification is reasonable if it rests upon some ground of difference having a real and substantial relation to the basic object of the particular enactment or on some relevant consideration of public policy. . . . The Legislature has a wide range of discretion in this area and distinctions will be presumed to rest upon a rational basis if there be any conceivable state of facts which would afford reasonable support for them."³⁵

For this reason, it is important to identify the purpose of any base-sharing act to determine its validity in light of the courts' application of a rational basis standard.

The stated purposes of the Metropolitan Fiscal Disparities Act are:

- (1) To provide a way for local governments to share in the resources generated by the growth of the area, without removing any resources which local governments already have;
- (2) To increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth and of highways, transit facilities and airports;
- (3) To establish incentives for all parts of the area to work for the growth of the area as a whole;
- (4) To provide a way whereby the area's resources can be made available within and through the existing system of local governments and local decision making;
- (5) To help communities in different stages of development by making resources increasingly available to communities at those early stages of development and redevelopment when financial pressures on them are the greatest;

where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for "phased growth" and hence, the challenged ordinance is not violative of the Federal and State Constitutions.

Id. at 383, 285 N.E.2d at 304-05, 334 N.Y.S.2d at 156.

34. 112 N.J. Super. 89, 270 A.2d 418 (1970), *aff'd sub nom.*, *Meadowlands Regional Redev. Agency v. State*, 63 N.J. 35, 304 A.2d 545, *appeal dismissed*, 414 U.S. 991 (1973).

35. *Id.* at 103, 270 A.2d at 424 (quoting *Wilson v. Long Branch*, 27 N.J. 360, 377, 142 A.2d 837, 846-47 (1958)).

- (6) To encourage protection of the environment by reducing the impact of fiscal consideration so that flood plains can be protected and land for parks and open space can be preserved; and
- (7) To provide for the distribution to municipalities of additional revenues generated within the area or from outside sources pursuant to other legislation.³⁶

Revenue raising is *not* one of the stated purposes of the Act. Municipal governments may decide, however, to maintain a given level of public services and impose higher or lower property tax rates, depending upon whether they have less or more base to tax as a result of the Act.

The *Onischuk* court seemed to use a rational basis standard of review.³⁷ The Minnesota Supreme Court was extremely deferential to the legislature's determination that the Act would further the basic objective of encouraging orderly economic development.³⁸ Proponents of the Act argued that business locational decisions and the behavior of local governmental officials would be affected by the Act's operation.³⁹ Planning experts argued that the metropolitan area is socially and economically interdependent.⁴⁰ From these assertions, the *Onischuk* court presumed

36. MINN. STAT. § 473F.01 (1982).

37. 301 Minn. 137, 222 N.W.2d 523 (1974).

38. *See id.* at 150-53, 222 N.W.2d at 531-32. In an interview with Justice James C. Otis, he stated that "we felt that people were bearing burdens and receiving benefits from other municipalities [and] . . . that the old conceptions of benefit and burden had become too restrictive". . . . When the legislature comes up with 'bold, innovative efforts' to deal with proliferating problems. . . 'the court must give enormous deference' to that legislature." A. ALBERT, *SHARING SUBURBIA'S WEALTH: THE POLITICAL ECONOMY OF TAX BASE SHARING IN MINNESOTA'S TWIN CITIES METROPOLITAN AREA* 141 (1979) (thesis presented to the Departments of Government and Economics, Harvard College; available at Citizens League Offices, Minneapolis, Minnesota).

39. *See* 301 Minn. at 152, 222 N.W.2d at 532. The court stated: "We find the arguments of defendants persuasive. Under existing tax practices, in order to improve their fiscal capacity, local units of government vie for commerce and industry to improve the fiscal capacity of its residents without considering the resulting impact on long-range planning and the utilization of their resources." *Id.*

40. *Id.* One of the opinions stated in a supportive planning study was set forth in Appellants' Brief:

Within the seven-county metropolitan area to which [the Act] applies, there are 190 cities, villages, boroughs and towns, and 61 school districts. In addition, there are the seven counties themselves and numerous special purpose governmental units. Despite the large number of political entities, the record shows that a great deal of economic interdependence exists among the people who live and work within this area. Dean Francis Boddy, a professor of Economics and Associate Dean of the Graduate School at the University of Minnesota and a member of the Minnesota Legislative Tax Study Committee, testified in this respect that the area is a "single service area."

The degree of the interdependence which exists within the metropolitan area is illustrated and quantified in Defendants' Exhibits 6 through 10. These exhibits contain the results of various surveys of travel within the metropolitan area. Exhibit 7 shows the relationship between county of residence and county of employment of persons employed within the metropolitan area (treating the cities of Minneapolis and St. Paul as separate counties for this purpose). The Exhibit indicates that approximately one-half of all of the persons employed

that a rational basis existed. The court's strong reliance on the planning theory used by legislators to justify enactment of the Act indicated that the court viewed the Act more as a land-use control device than as a tax statute. Therefore, difficulties with construing the constitutional validity of the Act in light of the uniformity clause were justifiably circumvented by the Minnesota Supreme Court.

III. EQUAL PROTECTION

Equal protection of the laws is mandated by the fourteenth amendment of the Federal Constitution.⁴¹ Where a class of persons subject to legislation is not distinguished by an immutable characteristic such as race, or where the interest affected by legislation is not a "fundamental" one, such as procreation, marriage, or related matters, the courts have typically applied a "rational basis" standard of review. The standard requires that the law serve a legitimate state purpose and is rationally related to the achievement of that purpose. Economic regulations, such as the Fiscal Disparities Act, usually fall under fourteenth amendment scrutiny and are consequently subject to this standard.⁴²

In *Onischuk*, plaintiffs did not challenge the Act's constitutionality by presenting an equal protection argument. But the *Onischuk* court, after discussing a United States Supreme Court decision that dismissed an equal protection argument, left the door open for such a challenge by stating in dicta, "The presumption of constitutionality which the statute enjoys has not been overcome by any explicit demonstration that its application results in a 'hostile and oppressive discrimination' against the residents of particular units of the government."⁴³ This conclusion was reached after analyzing an equal protection challenge to a school district financing plan in San Antonio, Texas,⁴⁴ discussed by the United States Supreme Court in *San Antonio School District v. Rodriguez*.⁴⁵

within the metropolitan area reside in a county other than that in which they are employed. Exhibit 8 reflects the traffic patterns within and between counties in the metropolitan area. . . . The Exhibit indicates that approximately one-third of all trips begin and end in different counties. Exhibit 9 shows the number of automobile trips in an average day which begin, end, or are wholly within each of the zones. . . . Exhibit 9 shows that there were 3,201,111 trips which began and ended in different zones and 1,008,096 trips which began and ended in the same zone. Thus, more than three of every four trips were interzonal.

Appellants' Joint Brief and Appendix at 19-20, *Onischuk* (1974) (testimony cites omitted).

41. U.S. CONST. amend. XIV, § 1 states, "[N]or shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

42. See generally J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 522-27, 619-23 (1978); L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 8-7 (1978).

43. 301 Minn. at 153-54, 222 N.W.2d at 533.

44. *Id.* at 150, 222 N.W.2d at 531.

45. 411 U.S. 1 (1973).

In *Rodriguez*, plaintiffs asserted that school districts with a higher property tax base could afford to spend more per pupil on education and that the right to education was a "fundamental interest" that deserved strict judicial scrutiny.⁴⁶ Plaintiffs argued that the financing scheme violated the equal protection clause by discriminating against those districts having a lower property tax base.⁴⁷ Although the United States Supreme Court dismissed the equal protection argument, it did not hold that wealth was not a "suspect" classification.⁴⁸ Instead, the Court stated that there was no definable class of "poor" people affected by the *Rodriguez* financing plan, since the only "poor" characteristic shared by the individuals was that they resided in districts that had lower assessable property values.⁴⁹

In contrast, any "discrimination" occurring under the Fiscal Disparities Act would be against the wealthy rather than the poor communities, because wealthy communities are forced to contribute a portion of their tax base to other communities. In order to maintain the same level of services, the property tax burden in these contributing communities is higher than it would be without imposition of the Act.

The most recent challenge to the Act was brought by one of these wealthy contributing communities. In *McCutcheon v. State*,⁵⁰ the City of Shakopee and two of its residents brought an action in tax court and alleged that the Act violated the equal protection clause because the city had lost twelve percent of its tax base.⁵¹ Plaintiffs relied on *Onischuk*⁵² and suggested that because the loss of tax base was so great, application of the Act resulted in "hostile and oppressive discrimination."⁵³ The tax

46. See *id.* at 35. The plaintiffs argued that although education is not afforded explicit protection under the United States Constitution, it is a fundamental personal right "because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote." *Id.*

47. See *id.* at 16. The Supreme Court found that the lower court held the system violated the equal protection clause, and that the state must demonstrate that there were compelling state interests furthered by the legislation in order to sustain it. *Id.* The lower court stated that the state was unable to do so, and "they fail[ed] even to establish a reasonable basis for these classifications." 337 F. Supp. 280, 284 (W.D. Tex. 1971).

48. Wealth is currently not a basis for classification that receives strict scrutiny by the courts, as are other suspect categories. See generally, J. NOWAK, R. ROTUNDA & J. YOUNG, *supra* note 42, at 619-23, 680-87; L. TRIBE, *supra* note 42, at §§ 16-49, 50, 55 & 56 (1978).

49. See 411 U.S. at 25.

50. Nos. Te-123, 124 & 125 (Minn. T.C. Feb. 13, 1981), *aff'd*, No. 81-368 (Minn. Feb. 19, 1982).

51. Shakopee's tax base had increased dramatically as a result of its consolidation with an area known as Eagle Creek Township, an area that contains a large industrial park. Its total assessed value rose from \$24,962,297 to \$34,171,328 from 1974 to 1975 as a result of the consolidation. Its assessed value for tax purposes dropped from \$34,171,328 to \$30,019,597 after paying into the metropolitan pool and receiving back its distribution. *Id.* slip op. at 8-9.

52. See *supra* note 37 and accompanying text.

53. *McCutcheon*, slip op. at 4.

court rejected plaintiffs' claim, noting that although the city had lost part of its tax base since enactment of the Act, it still had a higher commercial-industrial tax base per capita than most metropolitan communities.⁵⁴ The tax court rejected the claim that a twelve percent loss in tax base was "hostile and discriminatory."⁵⁵ In doing so, it in effect accepted the standard set forth in *Rodriguez*, finding:

The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.⁵⁶

In addition to relying upon the *Rodriguez* standard, the *McCutcheon* court relied on the rational basis standard of review applicable to equal protection claims in property tax classifications, as set forth in *In re McCannel*.⁵⁷ The *McCannel* court stated that a court may not strike down a classification unless it has been demonstrated that the classification was created by arbitrary discrimination but that the classification will be upheld if a rational basis for class distinctions can be found.⁵⁸

The *McCutcheon* court observed that under the rational basis test, petitioners must prove that no rational basis can be found for different or unequal treatment among municipalities.⁵⁹ The tax court cited studies of the Citizens League⁶⁰ demonstrating that the Act's purpose of reducing inequalities in fiscal capacity was being furthered.⁶¹ These studies showed that the gap between communities with the highest and the low-

54. *Id.* at 9. In fact, before the enactment of the Fiscal Disparities Act, Shakopee ranked 16th out of the 45 communities of over 9,000 persons in the metropolitan area; after the Act became operative, its rank never slipped below 6th. *Id.*

55. *Id.*

56. *Rodriguez*, 411 at 28.

[I]f the Act were not in effect, Shakopee would have a commercial-industrial valuation per capita of \$4,052; Minneapolis would have \$1,960, and Saint Paul, \$1,675. But . . . with the Act in effect, Shakopee's commercial-industrial valuation per capita is \$2,960; Minneapolis' is \$2,089; and Saint Paul's \$1,822. *20% of Commercial-Industrial Tax Base Now in Metro Pool*, CL News, Oct. 13, 1981, at 1. Thus, even after redistribution of the commercial-industrial valuation, Shakopee's commercial-industrial valuation per capita is 42 percent more than Minneapolis' and 62 percent more than Saint Paul's. That can hardly be deemed "hostile and oppressive."

See Amicus Curiae Brief of the Citizens League at 7, *McCutcheon*.

57. 301 N.W.2d 910 (Minn. 1980).

58. *Id.* at 916-18.

59. *McCutcheon*, slip op. at 5.

60. The Citizens League is an independent, non-partisan educational organization working for better government in the seven-county Twin Cities metropolitan area. Its membership is open to all residents of the area. The Citizens League has approximately 3,000 individual members and 400 organizational members, mainly comprised of businesses of widely varying sizes, and a number of local foundations.

61. *McCutcheon*, slip op. at 10.

est commercial-industrial assessed valuations per capita had been narrowing.⁶² This narrowing effect supported the presumed rationality of the legislature's attempt to distinguish between municipalities.⁶³ As a result, plaintiffs did not present sufficient evidence to overcome this presumption.⁶⁴

While it concluded that placing this type of burden on the city was not discriminatory, the *McCutcheon* court did not indicate to what extent a tax base loss would be permissible. In reaching its conclusion, however, the tax court recognized several facts in addition to net contribution of tax base to be considered when determining whether oppression exists. First, Shakopee never ranked less than sixth in per capita commercial-industrial tax base among municipalities of over 9,000 persons that were affected by the Act. Second, the city continued each year to gain, on a net basis, commercial-industrial valuation per capita. Third, Shakopee ranked eightieth out of eighty-eight metropolitan communities of 2,500 persons or more in property tax burdens on a typical \$25,000 homestead.⁶⁵

The *McCutcheon* rationale suggests that any future equal protection challenges will not be successful unless a plaintiff can show that application of the Act has significantly reduced the municipality's entire tax base and that this loss is serious enough to constitute "oppressive and hostile discrimination." It is conceivable that such a percentage loss could occur if a community experienced phenomenal commercial-industrial growth or if the Act were amended to require that a greater percentage of commercial-industrial growth must be shared. Even then, unless one of these events was coupled with a significant increase in population, per capita commercial-industrial valuation would probably not be affected seriously enough to be "oppressive."

IV. EFFECTS AND CRITICISMS OF THE ACT

A study conducted two years after the Act went into effect, indicated that the Act had resulted in greater equality in the fiscal capacities of the various affected communities.⁶⁶ A more recent study indicates that the trend has continued to the present and has resulted in a ratio of five to one⁶⁷ between the municipalities with the highest and the lowest per

62. Studies are available at Citizens League Offices, Minneapolis, Minn.

63. *McCutcheon*, slip op. at 10.

64. *See id.* at 5.

65. *See id.* at 9, 10.

66. METROPOLITAN COUNCIL, TAX BASE SHARING: THE MINNESOTA PROGRAM AFTER TWO YEARS (1977).

67. The study shows that the per capita valuation of commercial-industrial property, after subtracting contributions to the pool and adding in the distribution was \$3,596 for Maplewood, the highest ranking community. By comparison, the valuation for Apple Valley was \$763, a ratio of approximately 4.7 to 1. CL News, Oct. 18, 1981, at 1, 3 (study available at Citizens League Offices, Minneapolis, Minn.).

capita commercial-industrial valuation. Without the Act, the ratio would have been eleven to one.⁶⁸

Together, the two studies show that the Act is functioning as intended. Other studies suggest, however, that the Act's major purpose of encouraging more rational patterns of economic development is not being achieved.⁶⁹ One commentator suggests that tax base sharing could have an effect on development patterns in at least two ways: first, it reduces the incentives for local government officials to use zoning and other control mechanisms for encouraging commercial-industrial growth, and second, it influences business' locational decisions.⁷⁰ If after implementation of the Act, a community can still receive taxes from a commercial-industrial development after the community deducts its costs to provide the development with municipal services, there is no incentive to discourage the development.⁷¹ This is true even where spillovers such as pollution or noise to adjacent communities exist.⁷² There is no penalty for negative spillovers in the Act because distributions are made strictly according to formula.⁷³

68. *Id.*

69. Reschovsky, *An Evaluation of Metropolitan Area Tax Base Sharing*, 33 NAT'L TAX J. 55 (1980).

70. *Id.* at 59.

71. *Id.* at 59-60.

72. In a response to Reschovsky's article, one commentator argues that tax base sharing can actually distort the implicit market that compensates for negative neighborhood effects of commercial-industrial firms. Fox, *An Evaluation of Metropolitan Area Tax Base Sharing: A Comment*, 34 NAT'L TAX J. 275, 277 (1981). The compensation results from the net fiscal payments to local governments (the amount in excess of payment for municipal services received) in the form of taxes paid to the municipality. Fox states:

Tax base sharing reduces the compensation to each community providing [commercial-industrial] locations. This can be expected to reduce the number of sites offered, increase the cost of locations to business firms, and distort the location of industry. As it raises the cost of location to firms, the ones most concerned about higher taxes may look for alternatives just outside the metropolitan area.

Id.

Reschovsky responded to Fox as follows:

Although Fox is correct in asserting that tax base sharing may create locational distortions, it is unlikely that these distortions are of much quantitative importance relative to the locational inefficiencies created by interjurisdictional externalities that exist independent of tax base sharing. Professor Fox's argument is important if efficient locational decisions are occurring in the absence of tax base sharing. In other words, are local communities being exactly compensated for the undesirable neighborhood effects created by commercial-industrial firms? The market for locations will not work in the manner described by Fox if a significant number of firms created positive neighborhood effects, or if firms' locational choices are strongly influenced by non-fiscal factors. Fox argues that the mere existence of zoning and other land use controls is *prima facie* evidence that most businesses are considered undesirable land uses. I am not convinced by this argument. Zoning is a useful tool even if some firms generate benefits.

Reschovsky, *An Evaluation of Metropolitan Area Tax Base Sharing: Reply*, 34 NAT'L TAX J. 281 (1981).

73. Reschovsky, *supra* note 69, at 60.

In addition, it is difficult to discern any change in behavior of local governments from a decrease in disparity. Interviews with local officials suggest that their land-use decisions are not affected by tax base sharing.⁷⁴ The reasons for not considering tax base sharing when making land-use decisions include the predominance of non-fiscal considerations in development decisions, the impracticality of balancing revenues against costs of new commercial development, and strong desires on the part of local officials to increase employment opportunities.⁷⁵ Other regulatory measures, such as the A-95 review process⁷⁶ administered by the Metropolitan Council, the Metropolitan Land Use Planning Act,⁷⁷ and

74. William Barnhart of the City of Minneapolis commented:

We don't even think about [the] Fiscal Disparities [Act], we go after every development we can. The problem with the Act is that while it does blunt the impact that new commercial-industrial development could have on disparity, it doesn't take into account the jobs that are created, nor does it account for the "progressive" image that the city gets from new development. Also, you have to remember that we still get sixty percent of the growth.

Telephone interview with William Barnhart, Local Government Liaison and former Principal Planner for the City of Minneapolis (Sept. 24, 1982).

75. R. HONEY & R. ERICKSON, *LOCATIONAL EQUITY, LAND USE, AND MINNESOTA'S FISCAL DISPARITIES ACT* (1979). Interviews with a number of local officials were also conducted as part of the Albert thesis, *supra* note 38.

76. The A-95 review process mandates review and comment by the Metropolitan Council, as the A-95 clearing house, of all categorical federal grant applications submitted by local government units. Its primary purpose is to encourage and determine the consistency of proposed developments with regional planning efforts. Office of Management and Budget Circular A-95 (rev. July 24, 1969). This circular was developed pursuant to the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, § 204, 80 Stat. 1262 (codified at 42 U.S.C. § 3334 (1976)), and to the Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, §§ 101-10, 82 Stat. 1098-1101 (codified at 42 U.S.C. 4201 (1976)). The review process was effectively repealed through Exec. Order No. 12,372, 3 C.F.R. 197 (1983). The executive order calls for a "strengthened federalism" by relying on state and local processes for the state and local government coordination and for review of proposed federal financial assistance. *Id.*

77. Act of Apr. 2, 1976, ch. 127, 1976 Minn. Laws 292 (current version at MINN. STAT. §§ 473.851-872 (1982)). The purposes of the statute are:

(1) to establish requirements and procedures to accomplish comprehensive local planning with land use controls consistent with planned, orderly and staged development and the metropolitan systems plans, and (2) to provide assistance to local governmental units and school districts within the metropolitan area for the preparation of plans and official controls appropriate for their areas and consistent with metropolitan systems plans.

MINN. STAT. § 473.851 (1982). The legislative findings in support of the act are in part that:

the local governmental units within the metropolitan area are interdependent Since problems of urbanization and development transcend local governmental boundaries, there is a need for the adoption of coordinated plans, programs and controls by all local governmental units and school districts in order to protect the health, safety and welfare of the residents of the metropolitan area and to ensure coordinated, orderly and economic development.

MINN. STAT. § 473.851 (1982).

Interestingly, the Fiscal Disparities Act is located in the Land Use Planning section of the Minnesota Statutes, immediately following the Metropolitan Land Use Planning Act,

various environmental review processes in effect since the effective date of the Act, complicate attempts to isolate the impact of the Act. These additional regulatory measures more directly influence the locational decisions of businesses than do the indirect effects of local property tax levels.⁷⁸

Although businesses do take tax rate differentials into account when they move away from a metropolitan region,⁷⁹ it has been argued that when firms decide to move *within* a metropolitan region, great emphasis is not placed on fiscal conditions.⁸⁰ Their decision to move within a metropolitan region is determined after inquiring into whether the move will result in increased profits. One study found that, in general, firms do not move unless faced with serious problems such as a severe space shortage or a significant decline in profits.⁸¹ Another study reviewed the literature on taxes and industrial location and concluded that there is no substantial empirical evidence to link local fiscal conditions with business locational decisions.⁸² This suggests that rational land-use planning that occurs in a metropolitan area will *not* be due to the ability of local officials to entice businesses in the area with lower property taxes; rather, it will be due to other economic concerns, as described above.

The correlation between public sector investments and the rise in land value from private development provides support for base sharing. One commentator suggested:

Local taxable base is today determined as much by public investment decisions about the location of infrastructure as by local private investment. Much of the public investment in highways, educational facilities, mass transit, airport facilities and the like which make substantial increases in private investment and local land values possible are financed from state and Federal revenues collected from a much wider

rather than in the section on taxation. Its placement suggests that it has a closer affinity to land use regulations than to tax statutes.

78. One example of a change in location was that of Dayton Hudson Corporation, which in 1978 had plans to develop a new shopping center in Lake Elmo, a small community near the outskirts of the metropolitan area. Telephone interviews with Robert Davis and Robert Mazanek, Comprehensive Planning Section, Metropolitan Council (Sept. 27, 1982). This location was outside the Metropolitan Urban Service Area, an area defined, by agreement between metropolitan fringe communities and the Metropolitan Council as part of the review of local comprehensive plans under the Land Planning Act. Beyond this area the Metropolitan Waste Control Commission would not provide sewer lines. Any development wishing to locate outside the area would be required to install its own lines. In part due to the added expense, Dayton Hudson Corp. decided to locate in Woodbury, a community within the Urban Service Area. *Id.*

79. UNITED STATES ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL TAXATION AND INDUSTRIAL LOCATION 68-70 (1967).

80. Schmenner, *Urban Industrial Location: An Evolutionary Model*, 17 J. REGIONAL SCI. 179 (1977).

81. *Id.*

82. Oakland, *Local Taxes and Intraurban Industrial Location: A Survey*, in METROPOLITAN FINANCING AND GROWTH MANAGEMENT POLICIES (G. Break ed. 1978).

constituency than the local regulation to which the increases in taxable property base accrue.⁸³

The intuitive appeal to base sharing is that once all members of the region have contributed their federal and state taxes for public investments, each should receive a share of the fiscal benefits resulting to the region. Certain unexpected results occur, however, if this rationale for accepting base sharing is followed.

To increase the correlation between benefits received and cost paid requires that cities whose residents bear a larger cost receive larger benefits. If benefits and cost are measured simply as dollars paid vs. dollars received then the implication is that high income areas (which pay more state and federal taxes) should receive more benefits—i.e., share less base—than low income areas. Because the present formula does not adjust the amount of base that is shared to match the cost that is incurred it will tend to overcompensate low income areas for their cost and undercompensate high income areas.⁸⁴

This argument will always be present as long as property taxes are in existence, but will not likely affect the base-sharing system. The Act recognizes that benefits and cost *cannot* be measured as “dollars paid vs. dollars received” because many high-income areas receiving benefits from development also receive spillover benefits from other communities. Once the spillover benefits are recognized by courts, arguments that there must be a measurable relationship between contributions and benefits will be weakened.

Judicial recognition of spillover benefits will probably occur where interdependence exists among governmental units. The recognition has already been demonstrated in Minnesota cases. For example, the *Onischuk* court relied heavily on testimony that governmental interdependence exists in the Minneapolis-St. Paul region.⁸⁵ The *McCutcheon* court stated that “the Fiscal Disparities Act is grounded upon and accepts the reality that, in many respects, the metropolitan area is a single community.”⁸⁶

In contrast, a Wisconsin court struck down a school aid statute that

83. Lyall, *Tax-Base Sharing: A Fiscal Aid Toward More Rational Land Use Planning*, 41 J. AM. INST. PLANNERS 90-91 (1975).

84. Vogt, *Tax Base Sharing: Implications from San Diego County*, 45 J. AM. PLANNING A. 134, 136 (1979).

85. 301 Minn. at 152, 222 N.W.2d at 532.

86. Nos. Te-123, 124 & 125, slip op. at 8 (Minn. T.C. Feb. 13, 1981). The parties had stipulated as follows:

Stipulation of Fact 9.

a. The seven county metropolitan area, including the City of Shakopee, is socially, politically, and economically interdependent.

b. The majority of the working population of the seven county metropolitan area resides in one of 108 transportation planning districts, as those districts are defined by the Metropolitan Council, and works in another such district. The majority of the working population residing in the City of Shakopee works in another municipality.

c. Most commercial-industrial property, and virtually all C/I with a mar-

redistributed local property taxes on a statewide basis, in *Buse v. Smith*.⁸⁷ The purpose of the Wisconsin statute was "to get equal tax dollars for educational purposes from equal tax effort regardless of the disparity in tax base."⁸⁸ The *Buse* court recognized that public education is a matter of statewide concern and that the public benefits from equality of tax burden among the property owners of the state.⁸⁹ Since those taxes were raised by local governments and not by the state, redistribution to jurisdictions outside of those which raised the taxes was not permitted. To do so would violate the long standing rule that "the purpose of the tax must be one which pertains to the public purpose of the district within which the tax is to be levied and raised."⁹⁰ Unlike the *Onischuk* holding that benefits flow across direct lines in a relatively compact metropolitan area, the *Buse* decision found that there were no benefits flowing between the various state school districts.⁹¹

ket value over one million dollars, utilizes markets and other resources which are greater than local in character.

d. Citizens of the metropolitan area, including Shakopee, regularly utilize commercial, industrial and public resources located in governmental units other than the one in which they reside and pay property taxes. These resources include highways, shopping centers, lakes, parks, stadiums, hospitals, power plants, amusement parks, and cultural institutions.

Id.

87. 74 Wis. 2d 550, 247 N.W.2d 141 (1976).

88. *Id.* at 560-61, 247 N.W.2d at 146. Wisconsin Statutes §§ 121.07-.08 established a financing scheme under which a school district whose actual "equalized valuation" per pupil (computed by dividing the full value of the taxable property in the school district by the total number of children enrolled therein) exceeded the state guaranteed valuation per pupil, multiplied by primary and secondary required mill levy rates, was required to contribute to the general state fund whether its per pupil cost was less than or greater than the state "shared cost" ceiling. WIS. STAT. ANN. §§ 121.07-.08 (West Supp. 1982). "Shared cost" was defined as "the cost of operation, minus the operational receipts and amounts received under s. 79.04(1)(c), plus the principal and interest payments on long-term indebtedness and annual capital outlay, for the current school year." 74 Wis. 2d at 544, 247 N.W.2d at 143. The ceiling was 100% of the average per pupil shared cost for the previous school year. *Id.* If a district that contributed to the state fund (a "negative-aid" district) exceeded the ceiling, it would be required to pay more of its revenue to the state; a "positive-aid" district that spent beyond this level would receive less aid. The aim of the formula was to encourage districts to remain close to the median state per pupil spending ceiling. 74 Wis. 2d at 558, 247 N.W.2d at 145.

The "negative-aid" contributions to the state fund, under the statute, were ultimately to be redistributed to "positive-aid" school districts in the state. *See id.* at 557, 247 N.W.2d at 145.

89. 74 Wis. 2d at 574-75, 247 N.W.2d at 152.

90. *Id.* at 577, 247 N.W.2d at 153.

91. *Id.* at 578, 247 N.W.2d at 154. The court stated:

There may lurk in the field of present protection to person or property or both, or, in what seems quite idealistic, a high moral duty to mankind, in general, without regard to place and time, the essential element of consideration, yet it must be remembered that even the demands of charity, springing from dire distress in some foreign jurisdiction, or any outside of the particular taxing unit are not a legitimate basis for taxation of property in the particular jurisdiction,

The Fiscal Disparity Act's lengthy history recognized the presence of a "metropolitan consciousness" on the part of Twin Cities leaders, businesses, and individuals.⁹² Recognition of this consciousness may have been an important factor in passage of the Act and in permitting other measures to be taken.⁹³ The presence of these measures indicates awareness of metropolitan interdependence by the legislature, and lends support to the judicial recognition of that interdependence.

V. GROWTH-SHARING IN NEW JERSEY

A New Jersey growth-sharing plan in the Hackensack River basin is remarkably similar in purpose and operation to the Minnesota Fiscal Disparities Act. The New Jersey plan, however, explicitly ties the forced growth-sharing to a regional planning commission's activities,⁹⁴ unlike the Minnesota Act which requires a sharing of growth resulting from all public and private activities.⁹⁵ The distinction is important because the injection of a planning process into apportionment of growth provided

because of the absence of reciprocal obligations and benefits in a governmental sense.

Id. (citing *State ex rel. Owen v. Donald*, 160 Wis. 126, 127, 151 N.W. 331, 366 (1915)); *see also State ex rel. New Richmond v. Davidson*, 114 Wis. 563, 575, 88 N.W. 596, 90 N.W. 1067 (1902).

92. Aside from the obvious geographical proximity of the various communities that comprise the metropolitan area, the study listed three important sets of factors that contribute to this consciousness: (1) the political environment, characterized by the presence of two central cities which tend to diffuse central city-suburban conflicts, and by a high level of racial and ethnic homogeneity, (2) a history of "good government" with an early interest in interjurisdictional cooperation, and (3) a high level of participation in civic affairs by institutions such as the Citizens League, a respected, broadly based public affairs research organization, the University of Minnesota, and by the business community. A. ALBERT, *supra* note 38, at 30-34.

93. *See supra* notes 74-78 and accompanying text.

94. The planning and development authority of the Hackensack Meadowlands Development Commission requires the Commission to develop a master plan, N.J. STAT. ANN. § 13:17-9 (West 1979), for physical development of all land within the district, N.J. STAT. ANN. § 13:17-4 (West 1979). The Commission may receive federal renewal grants as a regional development agency under the Redevelopment Agencies Law. N.J. STAT. ANN. §§ 40:55C-1 to -108 (West 1976 & Supp. 1981). It may issue bonds and notes, N.J. STAT. ANN. § 13:17-23 to -33 (West 1979), condemn land within or without the district, N.J. STAT. ANN. § 13:17-34 (West 1979), and make special assessments against real estate located in improved districts, which districts the Commission has the power to establish. N.J. STAT. ANN. § 13:17-39 to -59 (West 1979).

95. The potential for sharing of increased tax revenues resulting from the location of a new major airport in the metropolitan airport exists by virtue of MINN. STAT. § 473.219 (1982). The statute recognizes that since "the exercise of the powers and duties conferred on government units by sections 473.215 to 473.217 to control development of land in an airport development area may result in greater development . . . within one government unit than another [but that] the control of such development will be of benefit to the entire airport development area," there should be a mechanism for growth-sharing. *Id.* The statute leaves it to the affected governmental units to jointly study and decide upon such a plan, requiring only that 80% of the units agree upon the plan to be put into effect.

solid basis for a New Jersey court to uphold the plan despite constitutional challenge. Although the New Jersey court dealt with several challenges to the New Jersey counterpart of the Minnesota Act, only challenges to the Hackensack "inter-municipal" account will be discussed.⁹⁶

The area subject to the Hackensack Meadowlands Reclamation and Development Act⁹⁷ is approximately 21,000 acres of salt water swamps, meadows, and marshes and is found in fourteen communities in Hudson and Bergen counties.⁹⁸ The communities comprise a portion of the New York-New Jersey metropolitan area. The Hackensack Meadowlands Development Commission has the authority to plan district growth⁹⁹ which does not bring with it a greater demand for public services. The result is that some municipalities experience growth in highly valuable industrial property.¹⁰⁰ Other communities receive low-density residential or park uses that cause greater demand for municipal services.¹⁰¹

The purpose of the Hackensack Act¹⁰² is to "equitably [apportion] the [new] benefits of the Commission's activities among the constituent municipalities, thus avoiding the bickering for ratables which . . . has characterized meadowland 'development.'"¹⁰³ The Hackensack Act provides a guarantee for each district municipality that it will be protected

against loss of its present existing tax ratable values within the

Id. As no new airport has been developed, the statute has not been subject to a court challenge.

96. *Meadowlands Regional Dev. Agency v. State*, 112 N.J. Super. 89, 270 A.2d 418 (1970). The other challenges to the New Jersey Act related to alleged procedural inadequacies in the act's passage, 112 N.J. Super. at 97, 270 A.2d at 422, constitutional prohibitions against special laws regulating internal municipal affairs or appointing local commissions for this purpose, *id.* at 122, 270 A.2d at 435, alleged unlawful delegation of zoning and land use control to the commission, *id.* at 122, 270 A.2d at 435-36, the constitutional prohibition of ex post facto laws or laws impairing the obligation of contracts, *id.* at 123, 270 A.2d at 436, a constitutional prohibition against intermixing unrelated topics in the same act, *id.* at 124, 270 A.2d at 437, a constitutional prohibition against amending a law by reference only to its title, *id.* at 126, 270 A.2d at 438, constitutional provisions governing presentation of a bill for the Governor's signature, *id.* at 127, 270 A.2d at 438, equal protection and due process violations as a result of district property owners being classified differently from property owners outside the district, *id.* at 128, 270 A.2d at 439, unconstitutional diversion of the proceeds of the sale of tidelands, *id.* at 130, 270 A.2d at 440, violation of the "one-man, one-vote" principle secured by the fourteenth amendment, *id.* at 131-32, 270 A.2d at 441, and allegations that the commission is a private corporation improperly performing the functions of a public body. *Id.* at 133, 270 A.2d at 441.

97. N.J. STAT. ANN. §§ 13:17-1 to -86 (West 1979).

98. N.J. STAT. ANN. §§ 13:17-1 & 13:17-4 (West 1979).

99. N.J. STAT. ANN. §§ 13:17-9 to -22 (West 1979).

100. *See* 112 N.J. Super. at 105, 270 A.2d at 426.

101. *Id.*

102. N.J. STAT. ANN. §§ 13:17-60 to -76 (West 1979).

103. 112 N.J. Super. at 105, 270 A.2d at 426.

meadowland district occurring by reason of the acquisition of taxable real property, through purchase, eminent domain or gift, by a governmental body or agency to be used for a public purpose . . . [and that it] will equitably share in the new financial benefits and new costs resulting from the development of the meadowland district as a whole.¹⁰⁴

The Hackensack Act redistributes growth of all taxable real property value (except for certain railroad property) by creating an "inter-municipal account" to which municipalities make dollar contributions instead of contributing tax base. Each municipality's "gross . . . obligation is determined by multiplying the increase in aggregate true value of its real property for the year in question by the apportionment rate, which boils down to the average tax rate of the 14 constituent municipalities."¹⁰⁵ Each municipality, where eligible, is entitled to receive guarantee payments, school district service payments, and an apportionment payment from the inter-municipal account. Guarantee payments are made when tax base has been reduced through public acquisitions. School service payments cover the costs of educating new meadowland district school pupils. The apportionment payment distributes any remaining funds in the inter-municipal account based on municipal acreage within the district.¹⁰⁶

In *Meadowlands Regional Development Agency v. State*,¹⁰⁷ the inter-municipal account created by the Hackensack Act was challenged on three constitutional grounds: First, whether the Act is a special law relating to taxation or exemption therefrom, in violation of the constitution; second, whether the Act is an improper delegation of the legislature's taxing power; third, whether the Act violates the constitution which provides

104. N.J. STAT. ANN. § 13:17-60(a) (West 1979).

105. 112 N.J. Super. at 106, 270 A.2d at 427. The act was amended in 1972 to correct an inequity in the original formula which had used a single "apportionment rate" to calculate municipal payment to the intermunicipal account. "This single rate, an average rate based on the combined budgets of all constituent municipalities, had an adverse effect on municipalities with low tax rates. The amendment provides for a separate 'apportionment rate' for each municipality which is really its effective or true tax rate, excluding county expenses." *Meadowlands Regional Redev. Agency v. State*, 63 N.J. 35, 42, 304 A.2d 545, 549 (1973).

106. *Meadowlands Regional Redev. Agency v. State*, 63 N.J. at 41-42, 304 A.2d at 548. N.J. STAT. ANN. § 13:17-74 provides for the computation of the "meadowlands adjustment payment" to or from each municipality. If a municipality's payment *into* the intermunicipal account *exceeds* the total amount of service payments it is entitled to receive *out* of the intermunicipal account, the difference is entered as a special line item appropriation in the municipal budget for that year and is paid in three annual installments to the intermunicipal account. N.J. STAT. ANN. § 13:17-74(c) (West 1979). If the payment *into* the intermunicipal account is *less than* total payment *out* of the account, the difference is shown as "miscellaneous revenues anticipated" in the municipal budget and is paid by the intermunicipal account in three equal installments. N.J. STAT. ANN. § 13:17-74(b) (West 1979).

107. 112 N.J. Super. 80, 270 A.2d 418 (1970).

that property is to be assessed for taxation under general laws and by uniform rules. The Act was upheld against all three challenges.¹⁰⁸

The trial court rejected the first challenge on the basis that the law was neither special nor was it a tax. In doing so, the trial court reaffirmed an important distinction previously established by New Jersey caselaw.¹⁰⁹ The court distinguished between state-imposed expenses relating to a public purpose (which municipalities must raise by taxation) and taxes imposed by the state. The court found that the Hackensack Act does not impose a direct state tax because no part of the adjustment payments go to the commission.¹¹⁰ Because the Act is a general, rather than a special law, the court held that its effect on municipal taxes were constitutionally permissible.¹¹¹

In legal contemplation, such payments [to the inter-municipal account] are obligations related to a public purpose which the State can properly require its subordinate political subdivisions to incur. In any event, Art. 9 and its operation have an *effect* on municipal taxes. . . .

The act is a general law. While it obviously relates to the tax rate of each constituent municipality, it is equally and obviously an incidental effect visited on the municipalities by operation thereof and in furtherance of the act's purposes.¹¹²

Although the benefits resulting from growth were converted into dollar payments, the New Jersey Superior Court did not consider the Hackensack Act a true tax but evaluated it in the context of the planning goals that it furthered. The court noted that the tax-sharing brought about in article 9 of the Act "is not . . . the sole purpose behind the act and its reason for being. Rather, . . . the inter-municipal account is merely a component, albeit a vital one, of the legislative plan to develop

108. 63 N.J. at 40, 304 A.2d at 547. On appeal, it was argued that the amended tax sharing provisions are arbitrary because payments to the intermunicipal account are unrelated to and not determined by expenditures out of the account. The New Jersey Supreme Court dismissed this challenge, stating:

[T]hese provisions are designed not merely to offset tax burdens resulting from the regional development, but also to have all constituent municipalities share in resultant tax benefits.

This is accomplished by distribution of what remains of the tax benefits, after compensating for whatever tax burdens have been sustained. Use of an acreage basis to distribute this surplus maintains the equitable sharing-of-benefit concept and is not on its face arbitrary.

63 N.J. at 44, 304 A.2d at 549.

109. The New Jersey courts have held that the state may impose expenses on local units of government, provided that the expenses serve a public purpose, even when those units must raise money by taxation to pay the obligation. *Eastern & A. R.R. v. Central R.R.*, 52 N.J.L. 267, 275-76, 19 A. 722, 725 (1890).

110. *See* 112 N.J. Super. at 108, 270 A.2d at 428. N.J. STAT. ANN. § 13:17-72(b) provides "[t]he commission shall not be able to receive any funds from the intermunicipal account for any purpose." N.J. STAT. ANN. § 13:17-72(b) (West 1979).

111. 112 N.J. Super. at 108, 113, 270 A.2d at 428, 430.

112. *Id.* (emphasis added).

the Hackensack meadowlands.”¹¹³

The third challenge to the Hackensack Act, that the Act violated New Jersey constitution’s uniformity clause, was rejected after discussing the history of the constitutional provision.¹¹⁴ The New Jersey Superior Court concluded that the Act’s purpose was to ensure that the burden of local government fell equally upon taxable real property situated therein.¹¹⁵ The court held that the Act

is entirely consistent [with the uniformity provision]. The burden of the cost of local government falls equally upon the taxpayers of each municipality—precisely the goal which the constitutional article was designed to achieve. The only manner in which the constituent municipalities are distinguished from others in tax matters lies in the fact that new tax revenues related to meadowland development are apportioned equitably among them.¹¹⁶

The uniformity challenge in *Meadowlands* was different from that in *Onischuk* in that the New Jersey provision under scrutiny was not intended to require that revenues raised locally be used only for local purposes.¹¹⁷ The *Meadowlands* court dealt only with the question of classification of property for the purpose of determining the relative share of the tax burden imposed by a municipality each class would carry. Since the New Jersey Act had not provided for preferential treatment of any class of real property within any of the constituent municipalities,¹¹⁸ the *Meadowlands* court stated:

to the extent that the Legislature has classified the real property in the constituent municipalities for tax purposes—which it really has not—

113. *Id.* at 113, 270 A.2d at 431.

114. *Id.* at 117, 270 A.2d at 433. The unlawful delegation challenge was also rejected by the court. *Id.* at 115, 270 A.2d at 432.

115. The New Jersey State Constitution provides that:

Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value . . . and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

N.J. CONST. art. VIII, § 1, cl. 1.

116. 112 N.J. Super. at 120, 270 A.2d at 434.

117. *Id.* The court stated:

There is nothing in the *Proceedings* [of the 1947 Constitutional Convention] which would give comfort to a possible plaintiff’s theory that Art. 8 prohibits the use of revenues raised locally for other than purely local purposes. This theory would do violence to the principle that all taxes are state taxes.

Id. at 119 n.8, 270 A.2d at 434 n.8.

Minnesota’s uniformity provision had been interpreted to require that the district taxed must receive “special benefits,” which in essence meant that locally raised revenues must be used only for local purposes. See *supra* note 17 and accompanying text. The *Onischuk* holding that a “special benefit” could be equated with positive spillover benefits did not disturb the reasoning of this line of cases.

118. 112 N.J. Super. at 120, 270 A.2d at 434.

the classification only relates to the apportionment of tax funds, an incident of the collection function, with respect to which the Legislature retained its power of classification¹¹⁹

The *Meadowlands* court thus was not confronted with how to justify the burden imposed by the growth-sharing act if there were no “tangible benefits” received by a contributing municipality, as was the *Onischuk* court. Although the *Meadowlands* decision did not refer to the interdependent nature of the fourteen municipalities affected by the act, or to spillover benefits accruing to the contributing municipalities, however, the spillover benefit rationale pervaded the New Jersey court’s discussion of the general nature of the Hackensack Act. The court stated that the act “will benefit all of the constituent municipalities through the development of lands which thus far have lain idle.”¹²⁰ The court also recognized that because each municipality’s contribution to the inter-municipal account is directly related to new value in its meadowlands, this “cost” is not “an arbitrary exaction for the benefit of other municipalities since . . . it is directly related to a benefit which the contributing municipality itself receives.”¹²¹

VI. CONCLUSION

The New Jersey and Minnesota decisions provide planners and lawyers with a framework in which other growth-sharing plans may be conceived and evaluated. In rejecting constitutional challenges, both courts gave great weight to the presence of clear plans to manage growth in a defined region and to the distribution of the benefits from that growth to constituent municipalities that are geographically compact. In both instances, the statutes left the taxing power to the local governments. Although the New Jersey Act went as far as to convert growth into dollar payments instead of merely transferring tax base, both courts treated the growth-sharing plans more like planning tools than true tax statutes. Although the effects of the Minnesota Act on business locational decisions are difficult to isolate because of the presence of other control measures in the metropolitan area, the Act has at least reduced fiscal disparities and may have contributed toward reducing competition for highly taxable property.

The importance of the Minnesota Fiscal Disparities Act, as well as the Hackensack Act, is clear in a time when all local governments are facing severe cutbacks in federal and state funding. Both Acts recognize the danger of interjurisdictional competition for highly taxable property on sound land-use management. They also provide a tool for reducing interjurisdictional competition at a time when it is most likely to increase.

119. *Id.* at 121, 270 A.2d at 435.

120. *Id.* at 114, 270 A.2d at 431.

121. *Id.*

Finally, the Citizens League noted that when local governments are free to make their own decisions on local taxation and spending levels and have adequate resources upon which to draw, benefits accrue to all citizens of the metropolitan area. Operation under the Minnesota Act is not dependent upon state or federal appropriations for success, an advantage that is significant in the 1980s.¹²²

122. Amicus Brief of the Citizens League, at 13, *McCutcheon*.